



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
WESTERN REGIONAL OFFICE

436 Dwight Street • Springfield, Massachusetts 01103 • (413) 784-1100

DEVAL L. PATRICK  
Governor

TIMOTHY P. MURRAY  
Lieutenant Governor

IAN A. BOWLES  
Secretary

LAURIE BURT  
Commissioner

Frank Basile  
Berkshire Power, LLC  
36 Moylan Lane  
Agawam, MA 01001

Re: **NOTICE OF NONCOMPLIANCE: NON-WE-08-9003-27A**

Noncompliance with M.G.L. Chapter(s) 111, 21, 21C and 310 CMR 7.00, 30.000, 314 CMR 7.00, 12.00

DEP Facility ID # 274425

At: Berkshire Power, LLC  
36 Moylan Lane  
Agawam, MA 01001

Dear Mr. Basile:

MassDEP personnel have observed that on August 30, 2007, activity occurred at Berkshire Power, located at 36 Moylan Lane in Agawam, in noncompliance with one or more laws, regulations, orders, licenses, permits, or approvals enforced by MassDEP.

Enclosed please find a Notice of Noncompliance, an important legal document describing the activities that are in noncompliance.

Additionally, this letter contains general information on possible options to reduce the quantity and/or toxicity of materials used by your facility, which if implemented, may assist in correcting the violations described in the enclosed document(s).

**OPPORTUNITIES FOR REDUCING THE FACILITY'S ENVIRONMENTAL IMPACT**

By modifying the facility's processes and/or waste generation practices, you may be able to reduce or eliminate the environmental regulatory requirements and fees that apply to this facility. These can include requirements to notify DEP, obtain DEP permits or other approvals, manage wastes in specific ways, and file reports on your operations with the agency. Potential modifications may include reducing the quantity and/or toxicity of waste that requires disposal, and eliminating or reducing the use of toxic chemicals by the facility. In addition, these options may improve your product quality and/or process efficiency, and save money.

In addition, tracking the facility's use of hazardous substances and reviewing that data periodically may lead to the identification of additional opportunities to reduce the quantity and toxicity of materials used,

and of hazardous wastes generated.

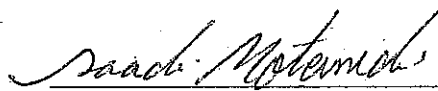
For information on reducing hazardous chemical use and/or waste generated, you may contact:

- The Office of Technical Assistance (617-626-1060) for free, CONFIDENTIAL technical assistance including on-site assessments, financial evaluations, the handbook "The Practical Guide to Toxics Use Reduction", and other resources.
- The Toxics Use Reduction Institute (978-934-3275) for courses for certified "Toxics Use Reduction Planners".
- DEP's Toxics Use Reduction Program (617-292-5982) for guidance material on the Toxics Use Reduction Act requirements.

If you have any questions regarding this matter, please contact Daniel Balboni of this office at (413) 755-2126.

Sincerely,

Date: 1/3/08



Saadi Motamedi  
Section Chief, Compliance & Enforcement  
Bureau of Waste Prevention

Enclosure

CERTIFIED MAIL: 7004 0550 0000 4694 8279

cc: Peter Czapienski, DEP/WERO (E-Copy)

**NOTICE OF NONCOMPLIANCE**

THIS IS AN IMPORTANT NOTICE, FAILURE TO TAKE ADEQUATE ACTION IN RESPONSE TO THIS NOTICE COULD RESULT IN SERIOUS LEGAL CONSEQUENCES.

Based on MassDEP's investigation on August 30, 2007, noncompliance was observed at Berkshire Power, located at 36 Moylan Lane in Agawam, with one or more laws, regulations, orders, licenses, permits or approvals enforced by MassDEP.

This Notice of Noncompliance describes (1) the requirement violated, (2) the date and place MassDEP asserts the requirement was violated, (3) either the specific actions which must be taken in order to return to compliance or direction to submit a written proposal describing how and when you plan to return to compliance, and (4) the deadline for taking such actions or submitting such a proposal.

If the required actions are not completed by the deadlines specified below, an administrative penalty may be assessed for every day after the date of this Notice that the noncompliance occurs or continues. MassDEP reserves its rights to exercise the full extent of its legal authority in order to obtain full compliance with all applicable requirements, including, but not limited to, criminal prosecution, civil action including court-imposed civil penalties, or administrative action, including administrative penalties imposed by MassDEP.

**NAME OF ENTITY(S) IN NONCOMPLIANCE:**

Berkshire Power, LLC (hereinafter referred to as the "Facility")

**LOCATION(S) WHERE NONCOMPLIANCE OCCURRED OR WAS OBSERVED:**

36 Moylan Lane  
Agawam, MA

**DATE(S) WHEN NONCOMPLIANCE OCCURRED OR WAS OBSERVED:**

August 30, 2007

**DESCRIPTION OF NONCOMPLIANCE:**

MassDEP's investigation shows that your company violated the following requirements:

**A. Air Quality**

1. The Facility failed to comply with a condition of plan approval 1-X-95-093, in violation of 310 CMR 7.02(3)(f). Specifically, there were no plastic baffle balls located in the ammonia containment area as required. The regulation states:

"Other than as provided in 310 CMR 7.02(2)(f), no person shall operate a facility approved under 310 CMR 7.02 except in compliance with any plan approval issued to the facility. A plan approval does not reduce or negate the responsibility of the facility owner or operator to comply with any other applicable requirements of the Department."

2. The Facility failed to comply with a condition of plan approval 1-X-95-093, in violation of 310 CMR 7.02(3)(f). Specifically, the Facility was not conducting formal annual training for the SCR and ammonia handling system as required. The regulation states:

"Other than as provided in 310 CMR 7.02(2)(f), no person shall operate a facility approved under 310 CMR 7.02 except in compliance with any plan approval issued to the facility. A plan approval does not reduce or negate the responsibility of the facility owner or operator to comply with any other applicable requirements of the Department."

**B. Hazardous Waste:**

3. The Facility failed to post a "WASTE OIL" sign in the waste oil accumulation area, in violation of 310 CMR 30.253(5)(c). The regulation states:

"All Very Small Quantity Generators of waste oil and/or used oil fuel shall comply with 310 CMR 30.353, including all other regulations referred to therein, except that a Very Small Quantity Generator of waste oil and/or used oil fuel need not comply with the signage requirement of 310 CMR 30.341(4) referenced in 310 CMR 30.353(6)(h). Instead, all areas where waste oil and/or used oil fuel is accumulated or stored, except for satellite accumulation areas, shall have posted at all times a sign with the words "WASTE OIL" in capital letters at least one inch high. Each sign shall meet the guidelines set forth in the National Fire Protection Association's Code No. 704."

4. The Facility failed to label a container of waste oil properly, in violation of 310 CMR 30.682 as referred to in 310 CMR 30.253(6)(c) and 30.353(6)(g). Specifically, the label did not contain the hazard associated with the waste in words (toxic). The regulation states:

"Throughout the period of storage, the side of each container of hazardous waste shall be clearly labeled and marked in a manner which identifies, in words, the hazardous waste(s) being stored in the container (e.g., acetone, toluene) and the hazard(s) associated with the waste (e.g., ignitable, toxic, dangerous when wet). Each container shall also be marked with the words "Hazardous Waste"."

**C. Industrial Wastewater**

5. The Facility failed to provide upon request and/or maintain an adequate operations and maintenance manual for its industrial wastewater pretreatment system, in violation of 314 CMR 7.05(2)(g)6. The regulation states:

"The owner or operator of an IWPS shall prepare, keep current, and implement an operation and maintenance manual. The operation and maintenance manual shall contain, at a minimum, the following items:

- a. An introduction, including a general description of the facility and industrial wastewater.
- b. Copies of all permits and standards, including any local permit and applicable categorical pretreatment standards.
- c. A description of the IWPS, which shall include:
  - i. a description of the principal treatment processes;
  - ii. a description of the sources of water supply;

- iii. identification of the sources of sanitary and industrial waste streams;
  - iv. a description of any by-product recovery systems;
  - v. a description of liquid waste flow control measures;
  - vi. a flow and material balance diagram; and
  - vii. a list of raw materials used.
  - d. A description of operation and management of the industrial wastewater sludge handling facility and the name and location of the final sludge reuse, recycling, or disposal facility or site.
  - e. Sampling and analytical procedures, including sampling locations, sampling frequencies, and analytical methods.
  - f. A maintenance plan, including daily operating procedures and a periodic inspection plan.
  - g. Emergency operating and response procedures, including a clear description of the communication among facility personnel and outside response agencies, emergency response procedures, and an emergency response equipment list and operating instructions.
  - h. A safety plan, including general operating safety practice requirements and specific handling practices for all hazardous wastes at the facility.
  - i. A utility and supply plan, including each system's utility, major equipment list, and major equipment spare part list.
  - j. A personnel management plan, including a facility staffing plan, operator certifications (if any), and personnel training programs, which shall include training relating to the safety plan, the maintenance plan, the emergency operating and response program, and documentation of the training provided to relevant facility staff."
6. The facility failed to maintain a calibration log for its monitoring equipment (pH meter), in violation of 314 CMR 7.05(2)(g)7.b. The regulation states:
- "An Industrial User with an IWPS shall maintain the following records at the facility at all times for at least three years; however this period shall be automatically extended for the duration of any enforcement action, and the records shall be made available for review by the EPA, Department, and the local or regional sewer authority upon request:
- i. Operation and maintenance records, including but not limited to, a daily operation log, a routine inspection log, an equipment maintenance log, a sludge management log with sludge shipment records, and a chemical and supply inventory;
  - ii. Sampling and analysis records, including but not limited to, chain of custody documents, raw data, quality assurance and quality control results, and analytical reports; and
  - iii. The owner or operator shall document that it has reviewed the IWPS and operation and maintenance manual annually and updated the manual appropriately."
7. The Facility failed to maintain the temperature of effluent samples (BOD and TSS) at 6 °C or less as required by 40 CFR 136, in violation of 314 CMR 12.06(2). The regulation states:

"All sampling and analysis required under 314 CMR 12.00 shall be in accordance with 40 CFR Part 136 or other methods approved by the Department."

8. The Facility failed to conduct pH monitoring in accordance with 40 CFR 136, in violation of 314 CMR 12.06(2). Specifically, the approved method for continuous pH monitoring requires the pH meter to be calibrated/standardized on a daily basis. The regulation states:

"All sampling and analysis required under 314 CMR 12.00 shall be in accordance with 40 CFR Part 136 or other methods approved by the Department."

**ACTION(S) TO BE TAKEN AND THE DEADLINE FOR TAKING SUCH ACTION(S):**

The following action(s) to be taken have individual deadlines associated with them. Your company shall take the necessary steps to correct the violations within the specified deadlines as noted and shall return to compliance with the requirements described below. MassDEP's regulations at 310 CMR 5.09 presume receipt of this Notice of Noncompliance, if delivered by regular mail, three business days after its date of issuance.

**A. Air Quality**

1. Within 30 calendar days from the date of receipt of this Notice, the Facility shall place plastic baffle balls in the ammonia containment area as required by plan approval 1-X-95-093.
2. Within 30 calendar days from the date of receipt of this Notice, the Facility shall conduct annual training for the SCR and ammonia handling system as required by plan approval 1-X-95-093.

**B. Hazardous Waste:**

3. Within 14 days from the date of receipt of this Notice, the Facility shall post a "WASTE OIL" sign in all areas where waste oil is accumulated, in accordance with 310 CMR 30.253(6)(c).
4. Effective immediately from the date of receipt of this Notice, the Facility shall label all containers of waste oil in accordance with 310 CMR 30.682.

**C. Industrial Wastewater**

5. Within 30 calendar days from the date of receipt of this Notice, the Facility shall develop, and submit a copy for review, an operations and maintenance manual for its industrial wastewater pretreatment system in accordance with 314 CMR 7.05(2)(g)6. (see enclosed)
6. Within 14 days from the date of receipt of this Notice, the Facility shall establish and maintain a calibration log for its pH meter. The calibration log shall include the date and time of the calibration, the pH buffers used in the calibration, the name of the person conducting the calibration, and the results of the calibration.
7. Effective immediately from the date of receipt of this Notice, the Facility shall conduct all sampling in accordance with 40 CFR 136, including all applicable preservation and container requirements.
8. Effective immediately from the date of receipt of this Notice, the Facility shall conduct all monitoring for its industrial wastewater discharge in accordance with 40 CFR 136.

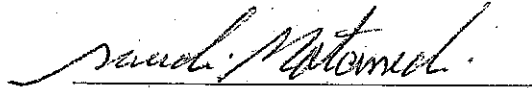
D. General

9. Within 14 calendar days from the date of receipt of this Notice, Berkshire Power shall submit, to MassDEP, a written description of each of the actions taken to correct the violations noted above as well as a status report of any corrective actions planned or being taken to achieve or maintain compliance. Any and all supporting documentation shall be included with the response to MassDEP.

Please address your reply to this Notice of Noncompliance to Saadi Motamedi at this office.

Date: \_\_\_\_\_

1/3/08



Saadi Motamedi  
Section Chief, Compliance & Enforcement  
Bureau of Waste Prevention

SM/DJB/djb